



Judiciary Committee

**Tuesday, April 4, 2006
10:15 A.M. – 11:00 A.M.
Morris Hall
(17 HOB)**

Amendment Packet

**EXPLANATION OF AMENDMENTS HB 129:
FIREARMS IN VEHICLES - by Rep. Baxley**

Amdt 1 by Reps. Simmons and Baxley (remove everything after the enacting clause):

TEMPORARILY POSTPONED AT LAST MEETING

This strike-all amendment differs from the bill as filed by narrowing the scope of the bill, removing the criminal penalty and providing a civil penalty, and providing exceptions and exemptions to the bill.

Amdt to the Amdt 1a by Rep. Kottkamp (lines 167-198):

This amendment to the amendment proposed to removed some of the immunity language and the opt out provisions for some employers.

FAILED

Amdt 2 by Reps. Baxley and Kottkamp (remove everything after the enacting clause):

This strike-all amendment differs from the bill as filed by narrowing the scope of the bill, removing the criminal penalty and providing a civil penalty, and providing exceptions and exemptions to the bill. The amendment includes public employers, but specifically exempts out schools and prisons, as well as some other employers.

The amendment provides that a public or private entity may not prohibit employees, customers, and other invitees from possessing any **lawfully held personal property** if such property is locked inside or to a private motor vehicle in a parking lot.

The amendment provides for enforcement by the Attorney General with the possibility of injunctive relief and a civil fine of up to \$10,000, per aggrieved employee or invitee, for each violation of the prohibition.

Amdt 3 by Reps. Baxley and Kottkamp (remove everything after the enacting clause):

This strike-all amendment differs from the bill as filed by narrowing the scope of the bill. The amendment provides:

- legislative intent and findings regarding constitutional protections and privacy;
- that a public or private entity may not ask a customer, invitee, or employee to reveal what is contained within a private motor vehicle and that a customer, invitee, or employee is not required to reveal what is contained within a private motor vehicle.
- that a search of a private motor vehicle may only be conducted by on-duty law enforcement personnel and must comply with due process requirements.
- that the Attorney General shall enforce the protections of the act.

Amdt 4 by Rep. Simmons (remove everything after the enacting clause):

This strike-all amendment differs from the bill as filed by narrowing the scope of the bill, removing the criminal penalty, providing civil remedies only, and providing exemptions to the bill.

The amendment includes public employers, but specifically exempts out schools, prisons, and any other property on which an employee or invitee is otherwise prohibited from transporting, storing, or possessing a firearm pursuant to any federal or state law.

The amendment provides that an employer or its lessor may prohibit employees or invitees from transporting, storing, or possessing a firearm on its property when reasonably necessary for the safety and welfare of employees, invitees, or the general public, or to safeguard business operations.

The amendment provides for immunity from liability for employers under certain conditions and provides for enforcement by the Attorney General.

The amendment provides that the provisions of the bill may not be construed in derogation of Florida's employment at will doctrine.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 129**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)

ADOPTED AS AMENDED _____ (Y/N)

ADOPTED W/O OBJECTION _____ (Y/N)

FAILED TO ADOPT _____ (Y/N)

WITHDRAWN _____ (Y/N)

OTHER _____

✓ Temp. Postponed

Council/Committee hearing bill: Judiciary

Representatives Simmons and Baxley offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 790.25, Florida Statutes, is amended to read:

790.25 Lawful ownership, possession, and use of firearms and other weapons.--

(1) DECLARATION OF POLICY.--The Legislature finds as a matter of public policy and fact that it is necessary to promote firearms safety and to curb and prevent the use of firearms and other weapons in crime and by incompetent persons without prohibiting the lawful use in defense of life, home, and property, and the use by United States or state military organizations, and as otherwise now authorized by law, including the right to use and own firearms for target practice and marksmanship on target practice ranges or other lawful places, and lawful hunting and other lawful purposes.

(2) USES NOT AUTHORIZED.--

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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(a) This section does not authorize carrying a concealed weapon without a permit, as prohibited by ss. 790.01 and 790.02.

(b) The protections of this section do not apply to the following:

1. A person who has been adjudged mentally incompetent, who is addicted to the use of narcotics or any similar drug, or who is a habitual or chronic alcoholic, or a person using weapons or firearms in violation of ss. 790.07-790.12, 790.14-790.19, 790.22-790.24.†

2. Vagrants and other undesirable persons as defined in s. 856.02.†

3. A person in or about a place of nuisance as defined in s. 823.05, unless such person is there for law enforcement or some other lawful purpose.

(3) **LAWFUL USES.**--The provisions of ss. 790.053 and 790.06 do not apply in the following instances, and, despite such sections, it is lawful for the following persons to own, possess, and lawfully use firearms and other weapons, ammunition, and supplies for lawful purposes:

(a) Members of the Militia, National Guard, Florida State Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard, organized reserves, and other armed forces of the state and of the United States, when on duty, when training or preparing themselves for military duty, or while subject to recall or mobilization.†

(b) Citizens of this state subject to duty in the Armed Forces under s. 2, Art. X of the State Constitution, under chapters 250 and 251, and under federal laws, when on duty or when training or preparing themselves for military duty.†

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50 (c) Persons carrying out or training for emergency
51 management duties under chapter 252.+

52 (d) Sheriffs, marshals, prison or jail wardens, police
53 officers, Florida highway patrol officers, game wardens, revenue
54 officers, forest officials, special officers appointed under the
55 provisions of chapter 354, and other peace and law enforcement
56 officers and their deputies and assistants and full-time paid
57 peace officers of other states and of the Federal Government who
58 are carrying out official duties while in this state.+

59 (e) Officers or employees of the state or United States
60 duly authorized to carry a concealed weapon.+

61 (f) Guards or messengers of common carriers, express
62 companies, armored car carriers, mail carriers, banks, and other
63 financial institutions, while actually employed in and about the
64 shipment, transportation, or delivery of any money, treasure,
65 bullion, bonds, or other thing of value within this state.+

66 (g) Regularly enrolled members of any organization duly
67 authorized to purchase or receive weapons from the United States
68 or from this state, or regularly enrolled members of clubs
69 organized for target, skeet, or trap shooting, while at or going
70 to or from shooting practice; or regularly enrolled members of
71 clubs organized for modern or antique firearms collecting, while
72 such members are at or going to or from their collectors' gun
73 shows, conventions, or exhibits.+

74 (h) A person engaged in fishing, camping, or lawful
75 hunting or going to or returning from a fishing, camping, or
76 lawful hunting expedition.+

77 (i) A person engaged in the business of manufacturing,
78 repairing, or dealing in firearms, or the agent or

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representative of any such person while engaged in the lawful course of such business.†

(j) A person firing weapons for testing or target practice under safe conditions and in a safe place not prohibited by law or going to or from such place.†

(k) A person firing weapons in a safe and secure indoor range for testing and target practice.†

(l) A person traveling by private conveyance when the weapon is securely encased or in a public conveyance when the weapon is securely encased and not in the person's manual possession.†

(m) A person while carrying a pistol unloaded and in a secure wrapper, concealed or otherwise, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business.†

(n) A person possessing arms at his or her home or place of business.†

(o) Investigators employed by the several public defenders of the state, while actually carrying out official duties, provided such investigators:

1. Are employed full time;

2. Meet the official training standards for firearms established by the Criminal Justice Standards and Training Commission as provided in s. 943.12(5) and the requirements of ss. 493.6108(1)(a) and 943.13(1)-(4); and

3. Are individually designated by an affidavit of consent signed by the employing public defender and filed with the clerk of the circuit court in the county in which the employing public defender resides.

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(p) Investigators employed by the capital collateral representative, while actually carrying out official duties, provided such investigators:

1. Are employed full time;

2. Meet the official training standards for firearms as established by the Criminal Justice Standards and Training Commission as provided in s. 943.12(1) and the requirements of ss. 493.6108(1)(a) and 943.13(1)-(4); and

3. Are individually designated by an affidavit of consent signed by the capital collateral representative and filed with the clerk of the circuit court in the county in which the investigator is headquartered.

(4) CONSTRUCTION.--This act shall be liberally construed to carry out the declaration of policy herein and in favor of the constitutional right to keep and bear arms for lawful purposes. This act is supplemental and additional to existing rights to bear arms now guaranteed by law and decisions of the courts of Florida, and nothing herein shall impair or diminish any of such rights. This act shall supersede any law, ordinance, or regulation in conflict herewith.

(5) POSSESSION IN PRIVATE CONVEYANCE.--Notwithstanding subsection (2), it is lawful and is not a violation of s. 790.01 for a person 18 years of age or older to possess a concealed firearm or other weapon for self-defense or other lawful purpose within the interior of a private conveyance, without a license, if the firearm or other weapon is securely encased or is otherwise not readily accessible for immediate use. Nothing herein contained prohibits the carrying of a legal firearm other than a handgun anywhere in a private conveyance when such firearm is being carried for a lawful use. Nothing herein

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138 contained shall be construed to authorize the carrying of a
139 concealed firearm or other weapon on the person. This subsection
140 shall be liberally construed in favor of the lawful use,
141 ownership, and possession of firearms and other weapons,
142 including lawful self-defense as provided in s. 776.012.

143 (6) STORAGE AND TRANSPORT OF FIREARMS LOCKED INSIDE OR
144 LOCKED TO A MOTOR VEHICLE IN A PARKING AREA; PENALTY; IMMUNITY
145 FROM LIABILITY.--

146 (a) As used in this subsection, the term:

147 1. "motor vehicle" means any automobile, truck, minivan,
148 sports utility vehicle, motorcycle, motor scooter, or any other
149 similar vehicle required to be registered under Florida law.

150 2. "employee" means any person who works for salary,
151 wages, or other remuneration; is an independent contractor; or
152 is a volunteer, intern, or other similar individual for an
153 employer.

154 3. "employer" means any business that is a sole
155 proprietorship, partnership, corporation, limited liability
156 company, professional association, cooperative, joint venture,
157 trust, firm, institution, or association, with employees.

158 4. "invitee" means any business invitee, including a
159 customer or visitor lawfully on the premises.

160 (b) Except as provided in paragraph (e), no employer, or
161 landlord of an employer, shall establish, maintain, or enforce
162 any policy or rule that prohibits or has the effect of
163 prohibiting an employee or invitee in lawful possession of a
164 firearm from parking a motor vehicle on any property used for
165 that purpose when the employee or invitee is lawfully in such
166 area and the firearm is actually locked inside or locked to the
167 motor vehicle, unless, at its own election, the employer, or

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landlord of the employer, provides the employee or invitee with the opportunity to:

1. check, store, or secure the firearm of the employee or invitee subject to reasonable conditions; or

2. park in an onsite area set aside by the employer, or landlord of the employer, for parking motor vehicles with a firearm locked inside or locked to the motor vehicle. In the event the employer, or landlord of the employer, elects to provide such onsite area, it shall be as convenient as other employee or invitee parking and shall not be marked or posted as a special parking area for such purposes; or

3. notify the employer, or landlord of the employer, or their designee, that the employee or invitee intends, from time to time, to be in lawful possession of a firearm locked inside or locked to a motor vehicle.

(c)1. No employer, or landlord of an employer, or employee imposing or implementing a policy under paragraph (b), shall be liable in any civil or other action for any harm that arises out of, or results from, directly or indirectly, the use or threatened use of a firearm that was being transported and stored by an employee or invitee and was locked inside of or locked to a motor vehicle on any property owned or leased by an employer, or landlord of an employer, and used for parking motor vehicles. The immunity provided in this sub-paragraph extends to the vicarious liability of an employer or landlord of an employer that arises out of, or results from, directly or indirectly, the use or threatened use of a firearm that was being transported and stored by an employee or invitee and was locked inside of or locked to a motor vehicle on any property owned or leased by an employer, or landlord of an employer, and

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198 used for parking motor vehicles. The immunity provided in this
199 sub-paragraph shall not apply to any person who uses or
200 threatens to use a firearm or other weapon. The immunity
201 provided in this sub-paragraph shall not apply if the harm
202 involved was caused, in whole or in part, by the willful or
203 criminal misconduct of the employer, or landlord of the
204 employer, or a conscious and flagrant indifference to the safety
205 of the person or persons harmed.

206 2. A civil fine of \$10,000, per aggrieved employee or
207 invitee, shall be imposed for each violation of the prohibition
208 in paragraph (b).

209 (d) It is the intent of this subsection to reinforce and
210 protect the right of each law-abiding employee or invitee to
211 enter and exit any property owned or leased by an employer, or
212 landlord of an employer, and used for parking motor vehicles
213 while the employee or invitee is lawfully transporting and
214 storing a firearm in the motor vehicle and the firearm is locked
215 inside or locked to the motor vehicle, to avail himself or
216 herself of temporary or long-term parking or storage of a motor
217 vehicle, and to prohibit any infringement of the right to lawful
218 possession of the firearm when the firearm is being transported
219 and stored inside or locked to a motor vehicle for a lawful
220 purpose.

221 (e) The prohibition in paragraph (b) does not apply to:

222 1. property owned or leased by an employer, or landlord of
223 an employer, upon which are conducted activities involving
224 national defense, aerospace, or domestic security.

225 2. property owned or leased by an employer, or landlord of
226 an employer, upon which a significant portion of the business
227 conducted on such property involves the manufacture, use,

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storage, sale, or transportation of hazardous or ultra-hazardous materials regulated under state or federal law, including combustible or explosive materials.

3. a motor vehicle owned, leased, or rented by an employer, or landlord of an employer, or its agent.

4. any other property owned or leased by an employer, or landlord of an employer, where an employee or invitee is prohibited from having a firearm pursuant to any federal law or any existing state general law on the effective date of this act.

Section 2. This act shall take effect July 1, 2006.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

An act relating to lawful ownership, possession, and use of firearms; amending s. 790.25, F.S., relating to lawful ownership, possession, and use of firearms and other weapons; providing definitions; prohibiting specified employers and landlords of employers in certain circumstances from establishing, maintaining, or enforcing any policy or rule that prohibits certain employees and invitees from parking a motor vehicle on property set aside for such purpose when a secured firearm is being lawfully transported and stored in the motor vehicle; providing for specified immunity from liability; providing a civil penalty; providing intent; providing exceptions; providing an effective date.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1A

Bill No. HB 129

COUNCIL/COMMITTEE ACTION

ADOPTED — (Y/N)
ADOPTED AS AMENDED — (Y/N)
ADOPTED W/O OBJECTION — (Y/N)
FAILED TO ADOPT ☒ (Y/N) (5/7)
WITHDRAWN — (Y/N)
OTHER —

Council/Committee hearing bill: Judiciary

Representative Kottkamp offered the following:

**Amendment to Amendment #1 by Representatives Simmons and
Baxley**

Remove lines 167-198 and insert:

motor vehicle.

(c)1. No employer, or landlord of an employer, or employee
imposing or implementing a policy under paragraph (b), shall be
liable for any harm that arises out of, or results from, the use
of a firearm that was being transported and stored by an
employee or invitee and was locked inside of or locked to a
motor vehicle on any property owned or leased by an employer, or
landlord of an employer, and used for parking motor vehicles.
The immunity provided in this

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Amendment No. 2

Bill No. HB 129

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Judiciary
Representative(s) Baxley & Kottkamp offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 790.251, Florida Statutes, is created
to read:

790.251 Privacy and personal property protection; storage
and transport of personal property locked inside or locked to a
motor vehicle in a parking area; penalty; immunity from
liability.--

(1) SHORT TITLE.--This act may be cited as the "Individual
Personal Private Property Protection Act."

(2) LEGISLATIVE INTENT.--This act is intended to codify
the longstanding legislative policy of this state that:

(a) Citizens have a constitutional right to privacy;

(b) Citizens have a constitutional right to possess and
securely keep legal private property within their motor
vehicles, particularly such property as is necessary for or
incidental to their exercise of other constitutional rights; and

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Amendment No. 2

21 (c) These rights are not abrogated by virtue of a
22 citizen's becoming a customer, employee, or invitee of a
23 business entity.

24 (3) LEGISLATIVE FINDINGS.--The Legislature finds that
25 citizens' lawful possession, transportation, and secure keeping
26 of certain private property within their motor vehicles is
27 essential to the exercise of fundamental constitutional rights,
28 including freedom of speech, freedom of association, the free
29 exercise of religion, and to keep and bear arms. The Legislature
30 finds that there is a compelling state interest to protect the
31 fundamental private property rights of the citizens of Florida.
32 The Legislature further finds that a citizen is not required and
33 should not be required to waive or abrogate his or her right to
34 possess and securely keep such constitutionally protected
35 private property locked within his or her motor vehicle by
36 virtue of becoming a customer, employee, or invitee of an
37 employer or a business establishment within the state.

38 (4) DEFINITIONS.--As used in this section, the term:

39 (a) "Aggrieved person" means any customer, employee, or
40 invitee as defined in this subsection.

41 (b) "Employee" means a person who works for salary, wages,
42 or other remuneration; is an independent contractor; or is a
43 volunteer, intern, or other similar individual for an employer.

44 (c) "Employer" means a business that is a sole
45 proprietorship, partnership, corporation, limited liability
46 company, professional association, cooperative, joint venture,
47 trust, firm, institution, association, or public-sector entity,
48 which has employees.

49 (d) "Invitee" means any business invitee, including a
50 customer or visitor, who is lawfully on the premises.

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Amendment No. 2

51 (e) "Motor vehicle" means any automobile, truck minivan,
52 sports utility vehicle, motor home, recreational vehicle,
53 motorcycle, or motor scooter, or any other vehicle, which is
54 operated on the roads of this state and is required to be
55 registered under Florida law.

56 (f) "Parking lot" means any property that is owned or
57 leased by an employer, or a landlord of an employer, and used
58 for parking motor vehicles and that is available to customers,
59 employees, or invitees for temporary or long-term parking or
60 storage of motor vehicles.

61 (5) PROHIBITED ACTS.--A public or private entity may not
62 violate the constitutional rights of any customer, employee, or
63 invitee as provided in this subsection:

64 (a) A public or private entity may not prohibit any
65 customer, employee or invitee from possessing any lawfully held
66 personal property if such property is locked inside or to a
67 private motor vehicle in a parking lot when the customer,
68 employee, or invitee is lawfully in such area.

69 (b) A public or private entity may not violate the privacy
70 rights of a customer, employee, or invitee by verbal inquiry or
71 actual search of a private motor vehicle in a parking lot. A
72 search of a private motor vehicle may be conducted only by on
73 duty law enforcement personnel and must comply with the due
74 process requirements of the Constitution of the State of Florida
75 and the United States Constitution.

76 (c) An employer may not condition employment upon
77 preventing or prohibiting, or otherwise attempt to prevent or
78 prohibit, any customer, employee, or invitee from keeping locked
79 within the trunk, glove box, other enclosed compartment, or area
80 out of sight within a motor vehicle any property or material the
81 lawful possession of which is protected by, or the lawful use of

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Amendment No. 2

82 which is incidental to, the exercise of individual rights
83 protected under the United States Constitution and the State
84 Constitution.

85 (d) An employer may not terminate the employment of or
86 otherwise discriminate against an employee, or expel a customer
87 or invitee, for exercising his or her constitutional right to
88 keep and bear arms or the right of self-defense as long as a
89 firearm is never exhibited on company property except for lawful
90 defensive purposes.

91
92 This section applies to all public-sector employers, including
93 those that are already prohibited from regulating firearms under
94 s. 790.33.

95 (6) IMMUNITY FROM LEGAL LIABILITY.--An employer or a
96 landlord of an employer is not liable in a civil action that
97 arises, directly or indirectly, out of or results from the theft
98 of or the threatened use or accidental or criminal use of a
99 firearm or any other legal property that was stored in the
100 private motor vehicle by a customer, employee, or invitee in a
101 parking lot owned or leased by an employer or the landlord of an
102 employer. The immunity provided in this subsection does not
103 apply to a person who uses or threatens to use a firearm or
104 other weapon in a criminal act. The immunity provided in this
105 subsection does not apply if the harm involved was caused, in
106 whole or in part, by the willful or criminal misconduct of the
107 employer or the landlord of the employer.

108 (7) ENFORCEMENT.--The Attorney General shall enforce the
109 protections of this act on behalf of an aggrieved person if
110 there is reasonable cause to believe that the customer,
111 employee, or invitee's rights under this act have been violated
112 by a public or private entity and shall commence a civil or

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

113 administrative action for damages, injunctive relief, or civil
114 penalties, and such other relief as may be appropriate under the
115 laws of this state pursuant to s. 760.51, or may negotiate a
116 settlement with an employer on behalf of an aggrieved person.

117 (8) The prohibitions in subsection (5) do not apply to:

118 (a) Property owned or leased by an employer, or the
119 landlord of an employer, upon which are conducted substantial
120 activities involving national defense, aerospace, or domestic
121 security if the presence of such private property in a parking
122 lot presents an increased danger of explosion or reasonably
123 predictable catastrophic event.

124 (b) Property owned or leased by an employer, or the
125 landlord of an employer, upon which the primary business
126 conducted is the manufacture, use, storage, or transportation of
127 combustible or explosive materials regulated under state or
128 federal law if the presence of such products in a parking lot
129 presents an increased danger of explosion or reasonably
130 predictable catastrophic event.

131 (c) A motor vehicle owned, leased, or rented by an
132 employer, or the landlord of an employer, or its agent.

133 (d) Any other property owned or leased by an employer, or
134 the landlord of an employer, if a customer, employee, or invitee
135 is prohibited from having a firearm or other legal product
136 pursuant to any federal law or any general law of this state
137 existing on the effective date of this act.

138 (e) Any school property as defined and regulated under s.
139 790.115.

140 (f) Any prison-facility grounds as defined and regulated
141 under s. 944.47.

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Amendment No. 2

142 (g) Uses of firearms and other weapons which are
143 prohibited under s. 790.25(2). The restrictions provided in that
144 subsection are not affected by this section.

145 Section 2. This act shall take effect upon becoming a law
146 and shall apply to causes of action that accrue on or after that
147 date.

148
149 ===== T I T L E A M E N D M E N T =====

150 Remove the entire title and insert:
151 An act relating to the protection of constitutional rights;
152 creating s. 790.251, F.S.; creating the "Individual Personal
153 Private Property Protection Act"; providing legislative intent
154 and legislative findings; defining terms; prohibiting a public
155 or private entity from violating the constitutional rights of a
156 customer, employee, or invitee by prohibiting or otherwise
157 deterring that person from having certain lawful items locked in
158 or to the person's private motor vehicle while it is in a
159 parking lot or by discouraging exercise of the right to keep and
160 bear arms; providing immunity from legal liability to an
161 employer or landlord of an employer for certain acts arising out
162 of another person's storing legal property in a private motor
163 vehicle parked on the employer's or landlord's property;
164 requiring the Attorney General to enforce this section on behalf
165 of an aggrieved person; providing exceptions to the prohibitions
166 imposed by the act; providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3

Bill No. HB 129

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Judiciary
Representative(s) Baxley & Kottkamp offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 790.251, Florida Statutes, is created
to read:

790.251 PRIVACY AND PERSONAL PROPERTY PROTECTION, STORAGE
AND TRANSPORT OF PERSONAL PROPERTY LOCKED INSIDE OR LOCKED TO A
MOTOR VEHICLE; PENALTY; --

(1) LEGISLATIVE INTENT. -- This Act is intended to
codify the long-standing legislative policy of this State that:

(a) Citizens have a constitutional right to privacy; and

(b) Citizens have a constitutional right to possess and
securely keep legal private property within their motor
vehicles, particularly such property as is necessary for or
incidental to their exercise of other constitutional rights.

(2) LEGISLATIVE FINDINGS.--The Legislature finds that
citizens' lawful possession, transportation, and secure keeping
of certain private property within their motor vehicles is
essential to the exercise of fundamental constitutional rights
including due process of law, freedom from unreasonable searches

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Amendment No. 3

23 and seizures, freedom of speech, freedom of association, free
24 exercise of religion, and to keep and bear arms. The Legislature
25 finds that there is a compelling state interest to protect the
26 fundamental privacy rights of the citizens of Florida.

27 (3) A public or private entity may not violate the
28 privacy rights of a person either by inquiry or actual search of
29 a private motor vehicle. A search of a private motor vehicle
30 may only be conducted by on-duty law enforcement personnel and
31 must comply with the due process requirements of the Florida
32 Constitution and the Constitution of the United States.

33 (4) A public or private entity may not ask a customer,
34 invitee, or employee to reveal what is contained within a
35 private motor vehicle and a customer, invitee, or employee is
36 not required to reveal what is contained within a private motor
37 vehicle.

38 (5) For purposes of this section, "motor vehicle" means
39 any automobile, truck, minivan, sports utility vehicle, motor
40 home, recreational vehicle, motorcycle, motor scooter, or any
41 other vehicle operated on the roads of this state required to be
42 registered under Florida law.

43 (6) ENFORCEMENT.--The Attorney General shall enforce the
44 protections of this act on behalf of an aggrieved person if
45 there is reasonable cause to believe that the person's rights
46 under this act have been violated by a public or private entity
47 and shall commence a civil or administrative action for damages,
48 injunctive relief, and/or civil penalties and other such relief
49 as may be appropriate under the laws of this state pursuant to
50 the provisions of s. 760.51, or may negotiate a settlement with
51 any employer on behalf of any aggrieved person.

Amendment No. 3

===== T I T L E A M E N D M E N T =====

An act relating to the protection of constitutional rights; creating s. 790.251, F.S.; providing legislative intent and legislative findings; defining terms; prohibiting a public or private entity from violating the privacy rights of a person either by inquiry or actual search of a private motor vehicle; providing that a search of a private motor vehicle may only be conducted by on-duty law enforcement personnel in compliance with constitutional protections; providing that a public or private entity may not ask a customer, invitee, or employee to reveal what is contained within a private motor vehicle; defining "motor vehicle"; requiring the Attorney General to enforce the act on behalf of an aggrieved person; providing for damages, injunctive relief, and civil penalties; providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 4

Bill No. HB 129

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Judiciary

Representative Simmons offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 790.25, Florida Statutes, is amended to read:

790.25 Lawful ownership, possession, and use of firearms and other weapons.--

(6) STORAGE AND TRANSPORT OF FIREARMS LOCKED INSIDE OR LOCKED TO A MOTOR VEHICLE IN A PARKING LOT; IMMUNITY FROM LIABILITY.--

(a) As used in this subsection, the term:

1. "motor vehicle" means any automobile, truck, minivan, sports utility vehicle, motorcycle, motor scooter, or any other similar vehicle required to be registered under Florida law.

2. "employee" means any person who works for salary, wages, or other remuneration; is an independent contractor; or is a volunteer, intern, or other similar individual for an employer.

3. "employer" means any business with employees that is a sole proprietorship, partnership, corporation, limited liability

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22 company, professional association, cooperative, joint venture,
23 trust, firm, institution, or association.

24 4. "invitee" means any business invitee, including a
25 customer or visitor lawfully on the premises.

26 5. "Parking lot" means any property that is owned or
27 leased by an employer, or a landlord of an employer, and used
28 for parking motor vehicles and that is available to customers,
29 employees, or invitees for temporary or long-term parking or
30 storage of motor vehicles.

31 (b) Except as prohibited pursuant to paragraphs (c) or
32 (d), an employee or invitee in lawful possession of a firearm
33 may transport and store a firearm locked inside or locked to his
34 or her motor vehicle in a parking lot designated by the employer
35 or its lessor if the firearm is stored out of sight.

36 (c) An employer or its lessor may prohibit an employee or
37 invitee from transporting, storing, or possessing a firearm on
38 property owned, leased, or controlled by the employer or its
39 lessor, or from transporting, storing, or possessing a firearm
40 in any motor vehicle owned, leased, or rented by the employer,
41 when reasonably necessary for the safety and welfare of
42 employees, invitees, or the general public, or to safeguard
43 business operations.

44 (d) The provisions of this subsection do not apply to:

45 1. school property as defined and regulated under s.
46 790.115.

47 2. prison-facility grounds as defined and regulated under
48 s. 944.47.

49 3. property on which an employee or invitee is otherwise
50 prohibited from transporting, storing, or possessing a firearm
51 pursuant to any federal or state law.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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(e) No employer or its lessor, nor any employee of either, shall be liable for any harm that arises out of or results from, directly or indirectly, the discharge or threatened use of a firearm that was transported or stored by an employee or invitee in a motor vehicle on property owned or leased by the employer or its lessor. The immunity provided in this paragraph shall not apply to any person who discharges or threatens to use the firearm, but it shall extend to the vicarious liability of an employer or its lessor for the actions or inactions of others. The immunity provided in this paragraph shall not apply if the harm involved was caused, in whole or in part, by the employer's or lessor's willful or criminal misconduct or by the employer's or lessor's conscious and flagrant indifference to the safety of the person or persons harmed.

(f) The Attorney General shall enforce the protections of this subsection on behalf of an aggrieved employee or invitee if there is reasonable cause to believe that the rights of the employee or invitee under this act have been willfully violated by an employer or its lessor.

(g) The provisions of this subsection shall not be construed in derogation of Florida's employment at will doctrine.

Section 2. This act shall take effect upon becoming a law and shall apply to causes of action that accrue on or after that date.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

An act relating to lawful ownership, possession, and use of firearms; amending s. 790.25, F.S., relating to lawful

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ownership, possession, and use of firearms and other weapons;
providing definitions; authorizing an employee or invitee in
lawful possession of a firearm to transport and store a firearm
in a motor vehicle under certain conditions; authorizing an
employer or its lessor to prohibit an employee or invitee from
transporting, storing, or possessing a firearm under certain
conditions when reasonably necessary for the safety and welfare
of employees, invitees, or the general public, or to safeguard
business operations; providing exceptions; providing for
specified immunity from liability; providing enforcement by the
Attorney General; providing an effective date.

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**EXPLANATION OF AMENDMENTS TO HB 339 CS:
SEXUAL PREDATORS - by Rep. Brandenburg**

Amdt 1 by Rep. Simmons (remove everything after the enacting clause):

1. Includes the substance of the bill. (s.1)

Plus:

Registration of sexual predators

2. Adds libraries to the list of entities that law enforcement must notify when a sexual predator establishes a residence. (s.1)

Residency provisions

3. Preempts local government residency exclusions and supersedes/nullifies those in existence prior to October 1, 2006. (s.2)

4. Adds the residency exclusion provisions to the list of laws a judge may not exempt a sexual predator from as part of a court order, whether to enter a plea agreement or other. Currently, the list includes the requirements for sexual predator designation and registration. (s.3)

5. Amends s. 794.065, to extend the residency restrictions for those committing offenses on or after October 1, 2006, from 1000' to 1500'. Applies the same method for calculating the distance as that currently applicable to a similar provision affecting probationers. Also adds two additional offenses to the list of offenses for which an offender may be subjected to a residency exclusion and also adds libraries as another facility type. (s.4)

6. For purposes of the conditional release program and probation, extends the 1000' residency requirement to 1500' beginning October 1, 2006, and adds libraries to the list of entities to which the residency exclusion applies. For those in the conditional release program, applies the same method for calculating the distance as that currently applicable to a similar provision affecting probationers. (ss.5,9)

Electronic monitoring

7. Extends the current requirement that the Parole Commission require electronic monitoring for certain sex offenses to two additional offenses when involving victims that are minors. These would be for kidnapping and false imprisonment. Would also be made applicable to probationers. (ss.5,9)

8. Revises the special condition applicable to conditional releasees and probationers subjecting them to warrantless searches to include such searches “through electronic monitoring or other means” for those convicted of an offense under 775.21(4)(a)1. (ss.5,9)

9. Prior to a judge releasing a sex offender with or without bail after a violation of probation, the judge would have to find the probationer “poses no danger” to the public rather than the current requirement to find that the probationer “is not a danger” to the public. It adds as a factor for the judge to consider “whether the probationer is subject to electronic monitoring.” (s.6)

10. Requires a judge to order electronic monitoring not just when it revokes the probation of a sex offender or predator following a violation of probation (as under current law), but also order it when there is a violation even if the judge does not revoke probation. (s.8)

Conditional release

11. Makes four additional sex-related offenses conditional release eligible, two of which are offenses for which electronic monitoring is required under the Jessica Lunsford Act. The four are kidnapping of a child, false imprisonment of a child, sexual performance by a child, and selling or buying minors. (s.5)

12. Prohibits the substitution of community supervision (i.e., probation) for conditional release supervision for sexual predators placed on both conditional release supervision and community supervision. (s.5)

13. Expressly authorizes the Parole Commission to modify the terms of conditional release supervision at any time. (s.5)

14. Provides that given the compelling state interest in protecting the public from sexual offenders and predators, that in a hearing involving an alleged violation of conditional release for failure to comply with the residency exclusion, the inability of the releasee to locate a residence in compliance with the residency exclusion shall not be a defense to the finding of a violation under this section. (s.7)

Probation

15. Provides that given the compelling state interest in protecting the public from sexual offenders and predators, that in a hearing involving an alleged violation of probation for failure to comply with the residency exclusion, the inability of the probationer to locate a residence in compliance with the residency exclusion shall not be a defense to the finding of a violation under this section. (s.8)

Employment Restrictions

16. Adds libraries to the list of prohibited places of employment for certain sexual predators (i.e., those whose victims were minors or under 18, depending on the program), including those on conditional release. Currently, a violation is punishable as a third degree felony. Other places of employment currently prohibited include, but are not limited to, schools, daycare centers, parks, and playgrounds. (ss.1,5)

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Bill No. HB 339 CS

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Judiciary

Representative Simmons offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraphs (f) and (g) of subsection (2), paragraph (b) of subsection (3), subsection (7) and paragraph (b) of subsection (10) of section 775.21, Florida Statutes, are amended to read:

775.21 The Florida Sexual Predators Act.--

(2) DEFINITIONS.--As used in this section, the term:

(f) "Permanent residence" means a place where the person abides, lodges, or resides for 5 ~~14~~ or more consecutive days.

(g) "Temporary residence" means a place where the person abides, lodges, or resides for a period of 5 ~~14~~ or more days in the aggregate during any calendar year and which is not the person's permanent address; for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state~~7. or a place where the person routinely abides, lodges, or resides for a period of 4 or more~~

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~~consecutive or nonconsecutive days in any month and which is not
the person's permanent residence, including any out of state
address.~~

(3) LEGISLATIVE FINDINGS AND PURPOSE; LEGISLATIVE INTENT.--

(b) The high level of threat that a sexual predator presents to the public safety, and the long-term effects suffered by victims of sex offenses, provide the state with sufficient justification to implement a strategy that includes:

1. Incarcerating sexual predators and maintaining adequate facilities to ensure that decisions to release sexual predators into the community are not made on the basis of inadequate space.

2. Providing for specialized supervision of sexual predators who are in the community by specially trained probation officers with low caseloads, as described in ss. 947.1405(7) and 948.30. The sexual predator is subject to specified terms and conditions implemented at sentencing or at the time of release from incarceration, with a requirement that those sexual predators found to be indigent ~~who are financially able must pay all or part of the costs of supervision~~ may defer payment pursuant to s. 28.246 of all or part of the costs in accordance with the provisions of that section.

3. Requiring the registration of sexual predators, with a requirement that complete and accurate information be maintained and accessible for use by law enforcement authorities, communities, and the public.

4. Providing for community and public notification concerning the presence of sexual predators.

5. Prohibiting sexual predators from working with children, either for compensation or as a volunteer.

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(7) COMMUNITY AND PUBLIC NOTIFICATION.--

(a) Law enforcement agencies must inform members of the community and the public of a sexual predator's presence. Upon notification of the presence of a sexual predator, the sheriff of the county or the chief of police of the municipality where the sexual predator establishes or maintains a permanent or temporary residence shall notify members of the community and the public of the presence of the sexual predator in a manner deemed appropriate by the sheriff or the chief of police. Within 48 hours after receiving notification of the presence of a sexual predator, the sheriff of the county or the chief of police of the municipality where the sexual predator temporarily or permanently resides shall notify each licensed day care center, elementary school, middle school, and high school, and library within a 1-mile radius of the temporary or permanent residence of the sexual predator of the presence of the sexual predator. Information provided to members of the community and the public regarding a sexual predator must include:

1. The name of the sexual predator;
2. A description of the sexual predator, including a photograph;
3. The sexual predator's current address, including the name of the county or municipality if known;
4. The circumstances of the sexual predator's offense or offenses; and
5. Whether the victim of the sexual predator's offense or offenses was, at the time of the offense, a minor or an adult.

This paragraph does not authorize the release of the name of any victim of the sexual predator.

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(10) PENALTIES.--

(b) A sexual predator who has been convicted of or found to have committed, or has pled nolo contendere or guilty to, regardless of adjudication, any violation, or attempted violation, of s. 787.01, s. 787.02, or s. 787.025, where the victim is a minor and the defendant is not the victim's parent; s. 794.011(2), (3), (4), (5), or (8); s. 794.05; s. 796.03; s. 800.04; s. 827.071; s. 847.0133; or s. 847.0145, or a violation of a similar law of another jurisdiction, when the victim of the offense was a minor, and who works, whether for compensation or as a volunteer, at any ~~business~~, school, day care center, park, playground, library, or other business or place where children regularly congregate, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Section 775.215, Florida Statutes, is created to read:

775.215 Residency exclusions for sexual offenders or predators; local ordinances preempted.--

(a) The establishment of residency exclusions applicable to the residences of persons required to register as a sexual offender or predator is expressly preempted to the state, and the distances established in 794.065, 947.1405, and 948.30, supersede any municipal or county ordinances imposing different distances.

(b) A provision of any ordinance adopted by a county or municipality prior to October 1, 2006, imposing residency exclusions for the residences of persons subject to the provisions of 794.065, 947.1405 or 948.30, is hereby repealed and abolished as of the effective date of this act.

Section 3. Paragraph (a) of subsection (2) of section 775.24, Florida Statutes, is amended to read:

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116 775.24 Duty of the court to uphold laws governing sexual
117 predators and sexual offenders.--

118 (2) If a person meets the criteria in this chapter for
119 designation as a sexual predator or meets the criteria in s2.
120 943.0435, s. 944.606, s. 944.607, or any other law for
121 classification as a sexual offender, the court may not enter an
122 order, for the purpose of approving a plea agreement or for any
123 other reason, which:

124 (a) Exempts a person who meets the criteria for
125 designation as a sexual predator or classification as a sexual
126 offender from such designation or classification, or exempts
127 such person from the requirements for registration or community
128 and public notification imposed upon sexual predators and sexual
129 offenders or exempts such person from the residency exclusions
130 contained in ss. 794.065, 947.1405, and 948.30.†

131 Section 4. Subsections (2) and (3) of section 794.065,
132 Florida Statutes, are created, and subsection (2) is
133 redesignated as subsection (4), and amended, to read:

134 794.065 Unlawful place of residence for persons convicted
135 of certain sex offenses.--

136 (2) It is unlawful for any person who has been convicted
137 of a violation of s. 787.01, s. 787.02, s. 794.011, s. 800.04,
138 s. 827.071, or s. 847.0145, regardless of whether adjudication
139 has been withheld, in which the victim of the offense was less
140 than 16 years of age, to reside within 1500 feet of any school,
141 day care center, park, library or playground. A person
142 violating this section and whose conviction under s. 787.01, s.
143 787.02, s. 794.011, s. 800.04, s. 827.071, or s. 847.0145 was
144 classified as a felony of the first degree or higher commits a
145 felony of the third degree, punishable as provided in s. 775.082
146 or s. 775.083. A person who violates this section and whose

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conviction under s. 794.011, s. 800.04, s. 827.071, or s. 847.0145 was classified as a felony of the second or third degree commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) The distances in subsection (2) of this section shall be measured in a straight line from the offender's place of residence to the nearest boundary line of the school, day care center, park, playground, library or other business or place where children congregate. The distance may not be measured by a pedestrian route or automobile route.

(4)(2) This Subsection (1) of this section applies to any person convicted of a violation of s. 794.011, s. 800.04, s. 827.071, or s. 847.0145 for offenses that occur on or after October 1, 2004. Subsection (2) of this section applies to any person convicted of a violation of s. 787.01, s. 787.02, s. 794.011, s. 800.04, s. 827.071, or s. 847.0145 for offenses that occur on or after October 1, 2006.

Section 5. Paragraphs (a) and(c) of subsection (2), subsection (6), paragraph (c) of subsection (7), of section 947.1405, Florida Statutes, is amended, and subsection (10) of said section is created, to read:

947.1405 Conditional release program.--

(2) Any inmate who:

(a) Is convicted of a crime committed on or after October 1, 1988, and before January 1, 1994, and any inmate who is convicted of a crime committed on or after January 1, 1994, which crime is or was contained in category 1, category 2, category 3, or category 4 of Rule 3.701 and Rule 3.988, Florida Rules of Criminal Procedure (1993), or is convicted of any offense on or after October 1, 2006, under one or more of the following:

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- 178 1. kidnapping, under 787.01 (1)(b);
179 2. false imprisonment, under 787.02 (1)(b);
180 3. sexual performance by a child, under 827.071; or
181 4. selling or buying of minors, under 847.01454

182 (c) 1. Is found to be a sexual predator under s. 775.21 or
183 former s. 775.23, shall, upon reaching the tentative release
184 date or provisional release date, whichever is earlier, as
185 established by the Department of Corrections, be released under
186 supervision subject to specified terms and conditions, including
187 payment of the cost of supervision pursuant to s. 948.09. Such
188 supervision shall be applicable to all sentences within the
189 overall term of sentences if an inmate's overall term of
190 sentences includes one or more sentences that are eligible for
191 conditional release supervision as provided herein.

192 2. Effective July 1, 1994, and applicable for offenses
193 committed on or after that date, the commission may require, as
194 a condition of conditional release, that the releasee make
195 payment of the debt due and owing to a county or municipal
196 detention facility under s. 951.032 for medical care, treatment,
197 hospitalization, or transportation received by the releasee
198 while in that detention facility. The commission, in determining
199 whether to order such repayment and the amount of such
200 repayment, shall consider the amount of the debt, whether there
201 was any fault of the institution for the medical expenses
202 incurred, the financial resources of the releasee, the present
203 and potential future financial needs and earning ability of the
204 releasee, and dependents, and other appropriate factors.

205 3. If any inmate, other than an inmate required to register
206 as a sexual predator or offender pursuant to s. 775.21 or
207 943.0435, placed on conditional release supervision is also
208 subject to probation or community control, resulting from a

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probationary or community control split sentence within the overall term of sentences, the Department of Corrections shall supervise such person according to the conditions imposed by the court and the commission shall defer to such supervision. If the court revokes probation or community control and resentsences the offender to a term of incarceration, such revocation also constitutes a sufficient basis for the revocation of the conditional release supervision on any nonprobationary or noncommunity control sentence without further hearing by the commission. If any such supervision on any nonprobationary or noncommunity control sentence is revoked, such revocation may result in a forfeiture of all gain-time, and the commission may revoke the resulting deferred conditional release supervision or take other action it considers appropriate. If the term of conditional release supervision exceeds that of the probation or community control, then, upon expiration of the probation or community control, authority for the supervision shall revert to the commission and the supervision shall be subject to the conditions imposed by the commission.

4. If any inmate required to register as a sexual predator or offender pursuant to s. 775.21 or 943.0435 is placed on conditional release supervision is also subject to probation or community supervision, the period of court-ordered community supervision may not be substituted for conditional release supervision and shall follow the term of conditional release supervision.

5. A panel of no fewer than two commissioners shall establish the terms and conditions of any such release. If the offense was a controlled substance violation, the conditions shall include a requirement that the offender submit to random substance abuse testing intermittently throughout the term of

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conditional release supervision, upon the direction of the correctional probation officer as defined in s. 943.10(3). The commission shall also determine whether the terms and conditions of such release have been violated and whether such violation warrants revocation of the conditional release.

(6) The commission shall review the recommendations of the department, and such other information as it deems relevant, and may conduct a review of the inmate's record for the purpose of establishing the terms and conditions of the conditional release. The commission may impose any special conditions it considers warranted from its review of the release plan and recommendation. If the commission determines that the inmate is eligible for release under this section, the commission shall enter an order establishing the length of supervision and the conditions attendant thereto. However, an inmate who has been convicted of a violation of chapter 794 or found by the court to be a sexual predator is subject to the maximum level of supervision provided, with the mandatory conditions as required in subsection (7), and that supervision shall continue through the end of the releasee's original court-imposed sentence. The length of supervision must not exceed the maximum penalty imposed by the court. The Commission may modify the conditions of supervision at any time.

(7)(a) Any inmate who is convicted of a crime committed on or after October 1, 1995, or who has been previously convicted of a crime committed on or after October 1, 1995, in violation of chapter 794, s. 800.04, s. 827.071, or s. 847.0145, and is subject to conditional release supervision, shall have, in addition to any other conditions imposed, the following special conditions imposed by the commission:

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270 1. A mandatory curfew from 10 p.m. to 6 a.m. The
271 commission may designate another 8-hour period if the offender's
272 employment precludes the above specified time, and such
273 alternative is recommended by the Department of Corrections. If
274 the commission determines that imposing a curfew would endanger
275 the victim, the commission may consider alternative sanctions.

276 2. a. If the victim was under the age of 18, a prohibition
277 on living within 1,000 feet of a school, day care center, park,
278 playground, designated public school bus stop, or other place
279 where children regularly congregate. A releasee who is subject
280 to this subparagraph may not relocate to a residence that is
281 within 1,000 feet of a public school bus stop.

282 b. Beginning October 1, 2004, the commission or the
283 department may not approve a residence that is located within
284 1,000 feet of a school, day care center, park, playground,
285 designated school bus stop, or other place where children
286 regularly congregate for any releasee who is subject to this
287 subparagraph. On October 1, 2004, the department shall notify
288 each affected school district of the location of the residence
289 of a releasee 30 days prior to release and thereafter, if the
290 releasee relocates to a new residence, shall notify any affected
291 school district of the residence of the releasee within 30 days
292 after relocation. If, on October 1, 2004, any public school bus
293 stop is located within 1,000 feet of the existing residence of
294 such releasee, the district school board shall relocate that
295 school bus stop. Beginning October 1, 2004, a district school
296 board may not establish or relocate a public school bus stop
297 within 1,000 feet of the residence of a releasee who is subject
298 to this subparagraph. The failure of the district school board
299 to comply with this subparagraph shall not result in a violation
300 of conditional release supervision.

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301 c. Beginning October 1, 2006, neither the commission nor
302 the department may approve a residence located within 1,500 feet
303 of a school, day care center, park, playground, designated
304 school bus stop, library, or other business or place where
305 children regularly congregate for any releasee who is subject to
306 this subparagraph.

307 d. The distance provided in sub- subparagraph c. shall be
308 measured in a straight line from the offender's place of
309 residence to the nearest boundary line of the school, day care
310 center, park, playground, library or other business or place
311 where children congregate. The distance may not be measured by a
312 pedestrian route or automobile route.

313 3. Active participation in and successful completion of a
314 sex offender treatment program with qualified practitioners
315 specifically trained to treat sex offenders, at the releasee's
316 own expense. If a qualified practitioner is not available within
317 a 50-mile radius of the releasee's residence, the offender shall
318 participate in other appropriate therapy.

319 4. A prohibition on any contact with the victim, directly
320 or indirectly, including through a third person, unless approved
321 by the victim, the offender's therapist, and the sentencing
322 court.

323 5. If the victim was under the age of 18, a prohibition
324 against contact with children under the age of 18 without review
325 and approval by the commission. The commission may approve
326 supervised contact with a child under the age of 18 if the
327 approval is based upon a recommendation for contact issued by a
328 qualified practitioner who is basing the recommendation on a
329 risk assessment. Further, the sex offender must be currently
330 enrolled in or have successfully completed a sex offender
331 therapy program. The commission may not grant supervised contact

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with a child if the contact is not recommended by a qualified practitioner and may deny supervised contact with a child at any time. When considering whether to approve supervised contact with a child, the commission must review and consider the following:

a. A risk assessment completed by a qualified practitioner. The qualified practitioner must prepare a written report that must include the findings of the assessment and address each of the following components:

(I) The sex offender's current legal status;

(II) The sex offender's history of adult charges with apparent sexual motivation;

(III) The sex offender's history of adult charges without apparent sexual motivation;

(IV) The sex offender's history of juvenile charges, whenever available;

(V) The sex offender's offender treatment history, including a consultation from the sex offender's treating, or most recent treating, therapist;

(VI) The sex offender's current mental status;

(VII) The sex offender's mental health and substance abuse history as provided by the Department of Corrections;

(VIII) The sex offender's personal, social, educational, and work history;

(IX) The results of current psychological testing of the sex offender if determined necessary by the qualified practitioner;

(X) A description of the proposed contact, including the location, frequency, duration, and supervisory arrangement;

(XI) The child's preference and relative comfort level with the proposed contact, when age-appropriate;

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(XII) The parent's or legal guardian's preference regarding the proposed contact; and

(XIII) The qualified practitioner's opinion, along with the basis for that opinion, as to whether the proposed contact would likely pose significant risk of emotional or physical harm to the child.

The written report of the assessment must be given to the commission.

b. A recommendation made as a part of the risk-assessment report as to whether supervised contact with the child should be approved;

c. A written consent signed by the child's parent or legal guardian, if the parent or legal guardian is not the sex offender, agreeing to the sex offender having supervised contact with the child after receiving full disclosure of the sex offender's present legal status, past criminal history, and the results of the risk assessment. The commission may not approve contact with the child if the parent or legal guardian refuses to give written consent for supervised contact;

d. A safety plan prepared by the qualified practitioner, who provides treatment to the offender, in collaboration with the sex offender, the child's parent or legal guardian, and the child, when age appropriate, which details the acceptable conditions of contact between the sex offender and the child. The safety plan must be reviewed and approved by the Department of Corrections before being submitted to the commission; and

e. Evidence that the child's parent or legal guardian, if the parent or legal guardian is not the sex offender, understands the need for and agrees to the safety plan and has agreed to provide, or to designate another adult to provide,

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394 constant supervision any time the child is in contact with the
395 offender.

396
397 The commission may not appoint a person to conduct a risk
398 assessment and may not accept a risk assessment from a person
399 who has not demonstrated to the commission that he or she has
400 met the requirements of a qualified practitioner as defined in
401 this section.

402 6. If the victim was under age 18, a prohibition on
403 working for pay or as a volunteer at any school, day care
404 center, park, playground, library, or other business or place
405 where children regularly congregate, as prescribed by the
406 commission.

407 7. Unless otherwise indicated in the treatment plan
408 provided by the sexual offender treatment program, a prohibition
409 on viewing, owning, or possessing any obscene, pornographic, or
410 sexually stimulating visual or auditory material, including
411 telephone, electronic media, computer programs, or computer
412 services that are relevant to the offender's deviant behavior
413 pattern.

414 8. Effective for a releasee whose crime is committed on or
415 after July 1, 2005, a prohibition on accessing the Internet or
416 other computer services until the offender's sex offender
417 treatment program, after a risk assessment is completed,
418 approves and implements a safety plan for the offender's
419 accessing or using the Internet or other computer services.

420 9. A requirement that the releasee must submit two
421 specimens of blood to the Florida Department of Law Enforcement
422 to be registered with the DNA database.

423 10. A requirement that the releasee make restitution to
424 the victim, as determined by the sentencing court or the

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commission, for all necessary medical and related professional services relating to physical, psychiatric, and psychological care.

11. Submission to a warrantless search by the community control or probation officer of the probationer's or community controllee's person, residence, or vehicle. Such warrentless search includes the use of electronic monitoring or other means in the case of a person convicted of an offense under s. 775.21(4)(a)1.

(11) Effective for a releasee whose crime was committed on or after October 1, 2006, in violation of s. 787.01 (1)(b) or s. 787.02 (1)(b), and the unlawful activity involved a victim 15 years of age or younger and an offender 18 years of age or older, in addition to any other provision of this section, the commission must order electronic monitoring for the duration of the releasee's supervision.

Section 6. Subsection (4) of section 948.06, Florida Statutes, is amended to read:

948.06 Violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.--

(4) Notwithstanding any other provision of this section, a probationer or an offender in community control who is arrested for violating his or her probation or community control in a material respect may be taken before the court in the county or circuit in which the probationer or offender was arrested. That court shall advise him or her of such charge of a violation and, if such charge is admitted, shall cause him or her to be brought before the court which granted the probation or community control. If such violation is not admitted by the probationer or offender, the court may commit him or her or release him or her

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with or without bail to await further hearing. However, if the probationer or offender is under supervision for any criminal offense proscribed in chapter 794, s. 800.04(4), (5), (6), s. 827.071, or s. 847.0145, or is a registered sexual predator or a registered sexual offender, or is under supervision for a criminal offense for which he or she would meet the registration criteria in s. 775.21, s. 943.0435, or s. 944.607 but for the effective date of those sections, the court must make a finding that the probationer or offender poses no ~~is not a~~ danger to the public prior to release with or without bail. In determining that the offender poses no danger to the public ~~the danger posed by the offender's or probationer's release~~, the court may consider the nature and circumstances of the violation and any new offenses charged; the offender's or probationer's past and present conduct, including convictions of crimes; any record of arrests without conviction for crimes involving violence or sexual crimes; any other evidence of allegations of unlawful sexual conduct or the use of violence by the offender or probationer; the offender's or probationer's family ties, length of residence in the community, employment history, and mental condition; his or her history and conduct during the probation or community control supervision from which the violation arises and any other previous supervisions, including disciplinary records of previous incarcerations; the likelihood that the offender or probationer will engage again in a criminal course of conduct; the weight of the evidence against the offender or probationer; whether or not the probationer is currently subject to electronic monitoring; and any other facts the court considers relevant. The court, as soon as is practicable, shall give the probationer or offender an opportunity to be fully heard on his or her behalf in person or by counsel. After such

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487 hearing, the court shall make findings of fact and forward the
488 findings to the court which granted the probation or community
489 control and to the probationer or offender or his or her
490 attorney. The findings of fact by the hearing court are binding
491 on the court which granted the probation or community control.
492 Upon the probationer or offender being brought before it, the
493 court which granted the probation or community control may
494 revoke, modify, or continue the probation or community control
495 or may place the probationer into community control as provided
496 in this section.

497 Section 7. Subsection (8) of section 947.141, Florida
498 Statutes, is created to read:

499 947.141 Violations of conditional release, control
500 release, or conditional medical release or addiction-recovery
501 supervision.--

502 (8) Because of the compelling state interest in protecting
503 the public from sexual offenders or predators granted the
504 privilege of conditional release, in any hearing alleging a
505 violation of community release by a releasee for failure to
506 comply with the residency exclusion in s. 947.1405, the
507 inability of the releasee to locate a residence in compliance
508 with s. 947.1405 shall not be a defense to the finding of a
509 violation under this section.

510 Section 8. Subsections (2) and (3) of section 948.063,
511 Florida Statutes, are created, and subsection (1) of said lines
512 is amended, to read:

513 948.063 Violations of probation or community control by
514 designated sexual offenders and sexual predators.--

515 (1) If probation or community control is revoked by the court
516 pursuant to s. 948.06(2)(e) and the offender is required to
517 register ~~designated~~ as a sexual offender or sexual predator

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pursuant to ss. 943.0435 or ~~s.~~ 775.21 for unlawful sexual activity involving a victim 15 years of age or younger and the offender is 18 years of age or older, and if the court imposes a subsequent term of supervision following the revocation of probation or community control, the court must order electronic monitoring as a condition of the subsequent term of probation or community control.

(2) If the probationer or offender is required to register as a sexual offender or sexual predator pursuant to ss. 943.0435 or 775.21 for unlawful sexual activity involving a victim 15 years of age or younger and the offender is 18 years of age or older, and has violated the conditions of his or her probation or community control, but the court does not revoke the probation or community control, the court shall nevertheless modify the probation or community control to include electronic monitoring for any probationer or offender not then subject to electronic monitoring.

(3) Because of the compelling state interest in protecting the public from sexual offenders or predators on probation, in any hearing alleging a violation of probation by a releasee for failure to comply with the residency exclusion in s. 948.30, the inability of the probationer to locate a residence in compliance with s. 948.30 shall not be a defense to the finding of a violation under this section.

Section 9. Subsections (1) and (3) of section 948.30, Florida Statutes, are amended, and subsection (4) of said section is created, to read:

948.30 Additional terms and conditions of probation or community control for certain sex offenses.--Conditions imposed pursuant to this section do not require oral pronouncement at the time of sentencing and shall be considered standard

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549 conditions of probation or community control for offenders
550 specified in this section.

551 (1) Effective for probationers or community controllees
552 whose crime was committed on or after October 1, 1995, and who
553 are placed under supervision for violation of chapter 794, s.
554 800.04, s. 827.071, or s. 847.0145, the court must impose the
555 following conditions in addition to all other standard and
556 special conditions imposed:

557 (a)1.~~(b)~~ If the victim was under the age of 18, a
558 prohibition on living within 1,000 feet of a school, day care
559 center, park, playground, or other place where children
560 regularly congregate, as prescribed by the court. The 1,000-foot
561 distance shall be measured in a straight line from the
562 offender's place of residence to the nearest boundary line of
563 the school, day care center, park, playground, or other place
564 where children congregate. The distance may not be measured by a
565 pedestrian route or automobile route.

566 2. If the victim was under the age of 18, a prohibition on
567 living within 1,500 feet of a school, day care center, park,
568 playground, library or other business or place where children
569 regularly congregate, as prescribed by the court. This distance
570 shall be measured in a straight line from the offender's place
571 of residence to the nearest boundary line of the school, day
572 care center, park, playground, library, or other business or
573 place where children congregate. The distance may not be
574 measured by a pedestrian route or automobile route.

575 (k) Submission to a warrantless search by the community
576 control or probation officer of the probationer's or community
577 controllee's person, residence, or vehicle. Such a warrentless
578 search includes the use of electronic monitoring or other means

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579 in the case of a person convicted of an offense under s.
580 775.21(4)(a)1.

581 (3) Effective for a probationer or community controllee
582 whose crime was committed on or after September 1, 2005, and
583 who:

584 (a) Is placed on probation or community control for a
585 violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071,
586 or s. 847.0145 and the unlawful sexual activity involved a
587 victim 15 years of age or younger and the offender is 18 years
588 of age or older;

589 (b) Is designated a sexual predator pursuant to s. 775.21;
590 or

591 (c) Has previously been convicted of a violation of
592 chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s.
593 847.0145 and the unlawful sexual activity involved a victim 15
594 years of age or younger and the offender is 18 years of age or
595 older, the court must order, in addition to any other provision
596 of this section, mandatory electronic monitoring as a condition
597 of the probation or community control supervision.

598 (4) Effective for a probationer or community controllee
599 whose crime was committed on or after October 1, 2006, who has
600 previously been convicted of a violation of 787.01 (1)(b) or
601 787.02 (1)(b) and the unlawful sexual activity involved a victim
602 15 years of age or younger and the offender is 18 years of age
603 or older, the court must order, in addition to any other
604 provision of this section, mandatory electronic monitoring as a
605 condition of the probation or community control supervision.

606 Section 10. This act shall take effect October 1, 2006.
607
608
609

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===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

An act relating to public safety; amending s. 775.21; relating to The Florida Sexual Predator Act; creating s. 775.215; relating to residency exclusions for sexual offenders or predators; local ordinances preempted; amending s. 775.24, F.S.; relating to the duty of the court to uphold laws governing sexual predators and offenders; amending s. 794.065, F.S.; relating the unlawful place of residence for persons convicted of certain sex offenses; amending s. 947.1405, F.S.; relating to conditional release program; creating s. 947.141, F.S., violations of conditional release, control release, or conditional medical release or addiction-recovery supervision; amending s. 948.06, F.S.; relating to the violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision; amending s. 948.063, F.S.; relating to violations of probation or community control by designated sexual offenders and sexual predators; amending s. 948.30, F.S.; relating to terms and conditions of probation or community control for certain sex offenses; providing an effective date.

**EXPLANATION OF AMENDMENTS TO HB 591 CS:
ELECTRONIC MONITORING - by Rep. Ambler**

Amdt 1 by Rep. Simmons (remove everything after the enacting clause):

This amendment includes a substantial, largely technical, rewording for improved clarity and makes several policy changes from the CS. The two principal changes are the following:

- Instead of permitting bail bond agents to set the fees they may charge for providing electronic monitoring services under the bill, the amendment limits their fees to those set by the chief judge of the circuit.
- The amendment converts the proposed specifications for electronic monitoring devices from requirements to guidelines for the Department of Corrections and the Department of Juvenile Justice to follow should they choose to use electronic monitoring within their facilities. Likewise, discretion is injected into several of the proposed specifications for monitoring devices to be used for persons on pretrial release rather than presenting them as precise mandates.

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Bill No. HB 591 CS

COUNCIL/COMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER ___

Council/Committee hearing bill: Judiciary

Representative Simmons offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (6) is added to section 648.387,
Florida Statutes, to read:

648.387 Primary bail bond agents; duties; provision of
electronic monitoring equipment and services by licensed bail
bond agents.--

(6) (a) A licensed bail bond agent qualifying under s.
907.07 may provide electronic monitoring equipment and services
for defendants released from custody on a surety bond and
subject to conditions including electronic monitoring.
A licensed bail bond agent may subcontract with a third party to
provide these services. A licensed bail bond agent qualifying
under s. 907.07 may also register with a governmental entity to
provide electronic monitoring equipment and services under
contract with that entity.

(b) A licensed bail bond agent may charge a person subject
to electronic monitoring a reasonable, nonrefundable fee for

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electronic monitoring equipment and services. The amount of the fee charged shall not exceed the amount established by the chief judge for the judicial circuit. The failure of a defendant to pay this fee in a timely manner shall constitute grounds for the agent to remand the person to the custody of the court or appropriate law enforcement agency. Fees charged by a bail bond agent for electronic monitoring equipment and services shall not be considered part of the bail bond premium and shall be exempt from the provisions of s. 648.33.

(c) Records and receipts for electronic monitoring equipment and services provided by a licensed bail bond agent shall be kept separate and apart from bail bond records, and available for inspection by the court or the appropriate governmental entity.

Section 2. Section 907.06, Florida Statutes, is created to read:

907.06 Electronic monitoring equipment and services.--

(1)(a) Electronic monitoring shall include the equipment and services necessary to continuously receive electronic signals from the transmitter worn by the defendant to determine the defendant's geographic position at any time to within an appropriate distance, as specified by the Department of Corrections, using Global Positioning Satellite (GPS) technology, subject to the limitations related to the technology and to circumstances of force majeure.

(b) Electronic monitoring equipment and services may be undertaken as a primary responsibility of a governmental entity or a licensed bail bond agent qualifying as a vendor under s. 907.07.

(c) A governmental entity or licensed bail bond agent may subcontract with an eligible third-party vendor to provide

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54 electronic monitoring equipment and services. A governmental
55 entity must select the third-party vendor through a competitive
56 bidding process.

57 (2)(a) Any governmental entity or bail bond agent
58 providing electronic monitoring services must immediately report
59 any known violations of the defendant's pretrial release
60 conditions to the appropriate court, law enforcement agency, and
61 state attorney. Additionally, if a third party vendor is
62 providing the electronic monitoring equipment and services under
63 a subcontract, then the third party vendor must report any known
64 violations.

65 (b)1. The primary duty owed by a governmental entity or
66 bail bond agent providing electronic monitoring equipment and
67 services is to provide a law enforcement officer, upon request,
68 with an indication of the physical location of the monitored
69 defendant at any point in time.

70 2. The governmental entity or licensed bail bond agent, or
71 any subcontractor thereof, is not responsible to third parties
72 for the failure of the monitoring equipment or for the criminal
73 acts of the monitored defendant.

74 (3) A defendant released in accordance with this section
75 shall not alter, tamper with, damage, or destroy any electronic
76 monitoring equipment or the data recorded by such equipment. A
77 defendant notified of a malfunction in the equipment shall
78 immediately cooperate with the vendor to restore the equipment
79 to proper functioning. A violation of this subsection shall
80 constitutes a violation of pretrial release and be grounds for
81 the defendant to be remanded to the court or appropriate law
82 enforcement agency.

83 Section 3. Section 907.07, Florida Statutes, is created to
84 read:

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85 907.07 Vendors of electronic monitoring equipment and
86 services; bail bond agent eligibility; process; standards.--

87 (1) This section shall not apply to electronic monitoring
88 services and equipment provided directly by a governmental
89 entity.

90 (2) The chief judge of each judicial circuit shall
91 maintain a list of all licensed bail bond agents qualified
92 pursuant to this section to serve as vendors of electronic
93 monitoring equipment and services in the judicial circuit. To
94 qualify as a vendor, a licensed bail bond agent must:

95 (a) register the name of the licensed bail bond agent or
96 third party subcontractor; the name and telephone number of the
97 individual employed by the licensed bail bond agent or
98 subcontractor that is serving as the contact person for the
99 licensed bail bond agent or subcontractor; and the address of
100 the licensed bail bond agent or subcontractor.

101 (b) certify in writing, both initially and annually by
102 January 1, thereafter, that the electronic monitoring equipment
103 used by the licensed bail bond agent or subcontractor complies
104 with the specifications for privately owned electronic
105 monitoring devices established by the Department of Corrections
106 pursuant to s. 907.08.

107 (c) not have plead nolo contendere to, or been adjudicated
108 guilty of, or convicted of, a felony offense.

109 (3) A licensed bail bond agent or subcontractor shall
110 promptly notify the chief judge of any changes in the
111 registration information required under this section.

112 (4) The chief judge may remove any licensed bail bond
113 agent or subcontractor from the list of eligible vendors if the
114 licensed bail bond agent or subcontractor:

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115 (a) fails to comply with the registration or
116 recertification requirements of this section; or

117 (b) fails to properly monitor any person the vendor is
118 required to monitor; or

119 (c) charges a defendant a fee for electronic monitoring
120 services and equipment in excess of the amount established by
121 the chief judge.

122 (d) has not plead nolo contendere to, or been adjudicated
123 guilty of, or convicted of, a felony offense.

124 Section 4. Section 907.08, Florida Statutes, is created to
125 read:

126 907.08 Standards for privately owned electronic monitoring
127 devices.-- To be utilized for electronically monitoring a person
128 under s. 907.06, privately owned electronic monitoring
129 equipment must meet the specifications established by the
130 Department of Corrections, consistent with the following
131 provisions:

132 (1) Be a transmitter unit that meets certification
133 standards approved by the Federal Communications Commission.

134 (2) (a) Emit signal content 24 hours per day identifying
135 the specific device being worn by the defendant and the
136 defendant's physical location using Global Positioning Satellite
137 (GPS) technology accurate to within an appropriate distance; or

138 (b) Receive signal content 24 hours per day, determining
139 the defendant's physical location using Global Positioning
140 Satellite (GPS) technology accurate to an appropriate distance,
141 recording the defendant's physical locations throughout the day,
142 and being capable of transmitting that record of locations to
143 the vendor at least daily.

144 (3) With respect to a unit affixed to a defendant, possess
145 an internal power source that provides a minimum of 1 year of

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normal operation without having to recharge or replace the power source. The device must emit signal content indicating its power status and notifying the vendor when the power source needs to be recharged or replaced.

(4) Possess and emit signal content indicating whether or not the transmitter has been tampered with or removed.

(5) Possess encrypted signal content or another feature designed to discourage duplication.

(6) Be shock resistant, waterproof, and capable of reliable function under normal atmospheric and environmental conditions.

(7) Be capable of wear and use in a manner that does not pose a safety hazard or unduly restrict the activities of the defendant.

(8) Be capable of being attached to the defendant in a manner that readily reveals any efforts to tamper with or remove the transmitter upon visual inspection.

(9) Make use of straps or other mechanisms for attaching the transmitter to the defendant that are either capable of being adjusted to fit a defendant of any size or that are made available in a variety of sizes.

Section 5. Section 907.09, Florida Statutes, is created to read:

907.09 Offenses related to electronic monitoring devices.--

(1) It is illegal for any person to intentionally alter, tamper with, damage, or destroy any electronic monitoring device used to monitor the location of a person pursuant to court order, unless the person is the owner of the equipment or an agent of the owner performing ordinary maintenance and repairs.

A person violating this subsection commits a felony of the third

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degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) It is illegal for any person to develop, build, create, possess, or use any device that is intended to mimic, clone, interfere with, or jam the signal of an electronic monitoring device used to monitor the location of a person pursuant to court order. A person violating this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) It is illegal for any person to intentionally alter, tamper with, damage, or destroy any data stored or transmitted by any electronic monitoring device used to monitor the location of a person pursuant to court order with the intent to violate the court order or to conceal a violation. A person violating this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Section 944.161, Florida Statutes, is created to read:

944.161 Electronic monitoring of inmates within correctional facilities.--

(1) The department is authorized to employ electronic monitoring of inmates incarcerated within state and private correctional facilities. The department must establish specifications for the electronic monitoring devices, consistent with the following:

(a) Electronic monitoring devices should have the capacity to continuously receive and monitor electronic signals from a transmitter worn by an inmate to continuously monitor the inmate in real time and identify the inmate's specific geographic position within the facility at any time. Transmitters should provide updates in appropriate intervals and monitor the

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208 inmate's geographical location to within an appropriate radius
209 of his or her actual location or to within a radius equal to the
210 width of a facility's average size sleeping quarters, whichever
211 is less, subject to the limitations relating to the state of the
212 art of the technology used and to circumstances of force
213 majeure.

214 (b) Any electronic monitoring service provided should also
215 include transmitters to be worn by department employees,
216 employees of private-sector companies contracted to operate
217 correctional facilities, and any visitors to correctional
218 facilities provided access to areas designated for authorized
219 personnel only. Transmitters should include a panic safety
220 button and should have the capacity to continuously receive and
221 monitor electronic signals from a transmitter worn by an
222 employee or visitor in real time and identify their specific
223 geographic positions within the facility at any time.
224 Transmitters should provide updates in appropriate intervals and
225 monitor employees and visitors to within an appropriate radius
226 of their actual location, subject to the limitations relating to
227 the state of the art of the technology used and to circumstances
228 of force majeure.

229 (c) Any electronic monitoring service should also include
230 equipment with the following technological and functional
231 capabilities:

232 1. Compatibility with a commercially recognized wireless
233 network access standard as designated by the department and
234 sufficient bandwidth to support additional wireless networking
235 devices to expand the capacity of the correctional facility to
236 use the service.

237 2. The capability of issuing an alarm to an internal
238 correctional monitoring station in an appropriate amount of time

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239 after receiving a panic alert from an employee or visitor
240 transmitter or within an appropriate amount of time after
241 violation of the established parameters for permissible movement
242 of inmates, employees, and visitors within the facility.

243 3.a. The capability of maintaining a historical storage
244 capacity sufficient to store up to an appropriate amount of
245 complete inmate, employee, and visitor tracking data for
246 purposes of follow-up investigations and vendor contract
247 auditing. The service should be capable of recording the
248 continuous uninterrupted movement of all monitored individuals,
249 including those in close proximity to any selected individual,
250 by specific position, rather than solely by area or zone.
251 Historical information should also be capable of being archived
252 by appropriate electronic data transfer to a permanent storage
253 medium designated as acceptable by the department.

254 b. In addition, data collected from each facility should
255 be capable of being electronically transmitted to a secure
256 offsite location in an appropriate storage medium designated as
257 acceptable by the department as a supplemental backup to protect
258 the archived data from alteration and to prevent loss due to
259 disaster or other cause.

260 4. With respect to a unit affixed to an inmate, be capable
261 of possessing an internal power source that is field
262 rechargeable or provides an appropriate period of normal
263 operation without the need to recharge or replace the power
264 source. Batteries used in devices should be capable of being
265 replaced by correctional employees. The device should emit
266 signal content indicating the power status of the transmitter
267 and notifying the correctional facility monitoring station of
268 any need to recharge or replaced the power source.

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269 5. Possess and emit signal content indicating whether or
270 not the transmitter has been tampered with or removed.

271 6. Possess encrypted signal content or another feature
272 designed to discourage duplication.

273 7. Be shock resistant, waterproof, and capable of reliable
274 function under normal atmospheric and environmental conditions.

275 8. The capability to sustain wear and use in a manner that
276 does not pose a safety hazard or unduly restrict the activities
277 of the inmate.

278 9. The capability of being attached to the inmate in a
279 manner that readily reveals any efforts to tamper with or remove
280 the transmitter upon visual inspection.

281 10. Either possess straps or other mechanisms for
282 attaching the transmitter to the inmate which are capable of
283 being adjusted to fit an inmate of any size or available in a
284 variety of sizes.

285 11. Be designed and constructed in such a way as to resist
286 tampering with or removal by the inmate.

287 12. Provide a backup power source in the event of a power
288 failure.

289 (2) A person may not intentionally alter, tamper with,
290 damage, or destroy any electronic monitoring equipment used to
291 monitor the location of a person within a correctional facility,
292 unless the person is the owner of the equipment or an agent of
293 the owner performing ordinary maintenance and repairs. A person
294 violating this subsection commits a felony of the third degree,
295 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

296 (3) A person may not develop, build, create, possess, or
297 use any device that is intended to mimic, clone, interfere with,
298 or jam the signal of an electronic monitoring device used to
299 monitor the location of a person within a correctional facility.

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A person violating this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person may not intentionally alter, tamper with, damage, or destroy any data stored in an electronic monitoring device pursuant to subparagraph (1)(c)3., unless done so with written permission from an authorized official of the department or in compliance with a data-retention policy of the department adopted by rule. A person violating this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) The department is authorized to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section.

Section 7. Section 985.4047, Florida Statutes, is created to read:

985.4047 Electronic monitoring of juvenile offenders within juvenile facilities.--

(1) The department is authorized to employ electronic monitoring of juvenile offenders incarcerated within state and private juvenile offender facilities for the purpose or reducing offender-on-offender violence and reducing employee sexual misconduct as defined in s. 985.4045. The department must establish specifications for the electronic monitoring devices, consistent with the following:

(a) Electronic monitoring devices must have the capability to continuously receive and monitor electronic signals from a transmitter worn by a juvenile offender to continuously monitor an offender in real time and identify at any time the offender's specific geographic position within the facility. Transmitters should provide updates in appropriate intervals and monitor the

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331 offender's geographical location to within an appropriate radius
332 of his or her actual location or to within a radius equal to the
333 width of a facility's average size sleeping quarters, whichever
334 is less, subject to the limitations relating to the state of the
335 art of the technology used and to circumstances of force
336 majeure.

337 (b) Any electronic monitoring service provided should also
338 include transmitters to be worn by department employees,
339 employees of private-sector companies contracted to operate
340 juvenile facilities, and any visitors to juvenile facilities
341 provided access to areas that are designated for authorized
342 personnel only. Transmitters should include a panic button and
343 have the capability to continuously receive and monitor
344 electronic signals from a transmitter worn by an employee or
345 visitor in real time and identify their specific geographic
346 positions at any time. Transmitters should provide updates in
347 appropriate intervals and monitor employees and visitors to
348 within an appropriate radius of their actual location, subject
349 to the limitations relating to the state of the art of the
350 technology used and to circumstances of force majeure.

351 (c) Any electronic monitoring service should also include
352 equipment with the following technological and functional
353 capabilities:

354 1. Compatibility with a commercially recognized wireless
355 network access standard as designated by the department and
356 sufficient bandwidth to support additional wireless networking
357 devices to expand the capacity of the system by the facility to
358 use the service.

359 2. The capability of issuing an alarm to an internal
360 facility monitoring station within an appropriate amount of time
361 after receiving a panic alert from an employee or visitor

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transmitter or within an appropriate amount of time after violation of the established parameters for permissible movement of offenders, employees, and visitors within the facility.

3.a. The capability of maintaining a historical storage capacity sufficient to store up to an appropriate amount of complete offender, employee, and visitor tracking data for purposes of follow-up investigations and vendor contract auditing. The service should be capable of recording the continuous uninterrupted movement of all monitored individuals, including those in close proximity to any selected individual, by specific position, rather than solely by area or zone. Historical information should also be capable of being archived by appropriate electronic data transfer to a permanent storage medium designated as acceptable by the department.

b. In addition, data collected from each facility should be capable of being electronically transmitted to a secure offsite location in an appropriate storage medium designated as acceptable by the department as a supplemental backup to protect the archived data from alteration and to prevent loss due to disaster or other cause.

4. With respect to a unit affixed to an offender, be capable of possessing an internal power source that is field rechargeable or that provides an appropriate period of normal operation without the need to recharge or replace the power source. Batteries used in devices should be capable of being replaced by facility employees. The device should emit a signal content indicating the power status of the transmitter and notifying the facility monitoring station of any need to recharge or replace the power source.

5. Possess and emit signal content indicating whether or not the transmitter has been tampered with or removed.

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393 6. Possess encrypted signal content or another feature
394 designed to discourage duplication.

395 7. Be shock resistant, waterproof, and capable of reliable
396 function under normal atmospheric and environmental conditions.

397 8. The capacity to sustain wear and use in a manner that
398 does not pose a safety hazard or unduly restrict the activities
399 of the offender.

400 9. The capability of being attached to the offender in a
401 manner that readily reveals any efforts to tamper with or remove
402 the transmitter upon visual inspection.

403 10. Either possess straps or other mechanisms for
404 attaching the transmitter to the offender which are capable of
405 being adjusted to fit an offender of any size or available in a
406 variety of sizes.

407 11. Be designed and constructed in such a way as to resist
408 tampering with or removal by the offender.

409 12. Provide a backup power source in the event of a power
410 failure.

411 (2) A person may not intentionally alter, tamper with,
412 damage, or destroy any electronic monitoring equipment used to
413 monitor the location of a person within a juvenile facility,
414 unless the person is the owner of the equipment or an agent of
415 the owner performing ordinary maintenance and repairs. A person
416 violating this subsection commits a felony of the third degree,
417 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

418 (3) A person may not develop, build, create, possess, or
419 use any device that is intended to mimic, clone, interfere with,
420 or jam the signal of an electronic monitoring device used to
421 monitor the location of a person within a juvenile facility. A
422 person violating this subsection commits a felony of the third

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degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person may not intentionally alter, tamper with, damage, or destroy any data stored in an electronic monitoring device pursuant to subparagraph (1)(c)3., unless done so with written permission from an authorized official of the department or in compliance with a data-retention policy of the department adopted by rule. A person violating this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) The department is authorized to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section.

Section 8. This act shall take effect October 1, 2006.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

A bill to be entitled

An act relating to electronic monitoring; amending s. 648.387, F.S.; authorizing bail bond agents to be vendors of electronic monitoring services; authorizing bail bond agents to contract with third-party vendors to provide electronic monitoring; authorizing bail bond agents to register with a governmental entity to provide electronic monitoring services in certain circumstances; authorizing such agents to collect a fee not to exceed the amount set by the chief judge for electronic monitoring services; providing that failure to timely pay fees constitutes grounds to remand; providing that such fees are exempt from specified premium requirements; creating s. 907.06,

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F.S.; providing for electronic monitoring of certain persons on pretrial release; requiring the monitored person to pay fees; prohibiting a person being monitored from tampering with monitoring equipment; creating s. 907.07, F.S.; requiring the chief judge of each circuit to maintain a list of licensed bail bond agents eligible to be vendors for provision of electronic monitoring services; requiring registration and certification; providing grounds for removal from the list; creating s. 907.08, F.S.; providing standards for privately owned electronic monitoring devices; creating s. 907.09, F.S.; providing criminal penalties for tampering with electronic monitoring devices; providing criminal penalties for cloning or jamming the signal of an electronic monitoring device; providing criminal penalties for the alteration or destruction of data stored or transmitted by an electronic monitoring device with specified intent; creating ss. 944.161 and 985.4047, F.S.; authorizing electronic monitoring of inmates within correctional facilities and juvenile offenders within juvenile facilities, respectively; providing for monitoring of certain employees and visitors to such facilities; providing system requirements; prohibiting specified actions relating to such monitoring systems and data from such systems; providing penalties; providing rulemaking authority; providing an effective date.